

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

AARON GUERRERO,

Plaintiff,

v.

GABRIEL GRASSO, et al.,

Defendants.

Case No. 2:24-cv-00261-MMD-BNW

**REPORT AND RECOMMENDATION**

On February 6, 2024, Plaintiff filed his complaint. ECF No. 1. Because he failed to pay the filing fee or apply to proceed *in forma pauperis*, the Court gave him 30 days to submit the IFP application or pay the fee. ECF No. 3. Plaintiff failed to comply with the deadline, so the Court recommended that his case be dismissed. ECF No. 4. Plaintiff objected to the recommendation and requested an extension of the deadline. ECF No. 5. The Court vacated its recommendation and gave Plaintiff a new deadline. ECF No. 6. Plaintiff has once again failed to comply with the deadline and to date has not submitted an application or paid the fee. As a result, the Court recommends that Plaintiff's case be dismissed without prejudice.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third

1 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of  
2 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
3 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
4 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

5 The fifth factor requires the Court to consider whether less-drastic alternatives can be used  
6 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts  
7 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
8 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th  
9 Cir. 1986). Because this action cannot proceed without a completed IFP application or a paid  
10 filing fee, the only alternative is to enter another order setting another deadline. The  
11 circumstances here do not indicate that Plaintiff needs additional time. Therefore, setting another  
12 deadline is not a meaningful alternative. So, the fifth factor favors dismissal.


13 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*  
14 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four  
15 factors support dismissal or where at least three factors “strongly” support dismissal).

16 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED without**  
17 **prejudice** for failure to comply with the Court’s deadline.

18 **NOTICE**

19 This report and recommendation is submitted to the United States district judge assigned  
20 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
21 may file a written objection supported by points and authorities within fourteen days of being  
22 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely  
23 objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153,  
24 1157 (9th Cir. 1991).

25  
26 DATED: October 7, 2024

27   
28 BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE